

1 Remarks

2 Amendments to the claims

3 Claims 1, 11, 21 and 37 have been amended as indicated above.  
4 Specifically, claims 1, 11, 21 and 37 have been respectively amended to clarify  
5 method steps that are performed (or corresponding configurations) responsive to  
6 other method steps (or their configurational counterparts), as originally respectively  
7 recited therein. Support for these amendments is found at least in the Specification  
8 at page 4, line 13 to page 10, line 14 as originally filed. No new matter has been  
9 added through the amendments to the claims.  
10

11 Objections to the Claims

12 Claims 5-7 have been objected under 37 CFR 1.75(c), as being of improper  
13 form for failing to further limit the subject matter of a previous claim. In particular,  
14 claims 5-7 respectively recite the phrasing "is defined as", which, the Examiner  
15 alleges, merely renames a given term and does not narrow the scope of the  
16 respective previous claim (page 2 of Office action). The Applicants respectfully  
17 disagree with the Examiner, as follows:

18 a) Claim 5 recites, in part: "the *predefined quantity* is defined as a *predefined*  
19 *optimum retrieval quantity*". The particular term "predefined optimum retrieval  
20 quantity" is described both generally and by specific example at least at page 9, lines  
21 26-27, and at page 9, line 32 to page 10, line 8 of the Specification as originally filed.  
22 Thus, the Applicants contend that the term "predefined optimum retrieval quantity" is  
23 not a mere renaming of the corresponding antecedent "predefined quantity", but  
24 rather imparts narrowing definition thereto that is supported within the pending  
25 Application as originally filed.

b) Claim 6 recites, in part: "the *predefined quantity* is defined as a *re-definable*  
*retrieval quantity*". Thus, the particular antecedent term "predefined quantity" is

1 further limited (i.e., narrowed) by the language of claim 6 as a "re-definable retrieval  
2 quantity" – as opposed to some other fixed (i.e., constant) quantity of a nature not  
3 related to the retrieval of data. Support for the limitations as recited by claim 6 can  
4 be found at least at page 9, lines 26-27 of the Specification as originally filed. The  
5 Applicants contend that the term "re-definable retrieval quantity" is not a mere  
6 renaming of the corresponding antecedent "predefined quantity", but rather imparts  
7 narrowing definition thereto that is supported within the pending Application as  
8 originally filed.

9 c) Claim 7 recites, in part: "the *predefined quantity* is defined as an optimum  
10 file retrieval count determined in accordance with a predefined optimization formula".  
11 The particular term "predefined (i.e., predetermined) optimization formula" is  
12 described in general, while the term "optimum file retrieval count" is supported by  
13 specific example, at least at page 9, line 32 through page 10, line 8 of the  
14 Specification as originally filed. Thus, the Applicants contend that the term "optimum  
15 file retrieval count" is not a mere renaming of the corresponding antecedent  
16 "predefined quantity", but rather imparts narrowing definition thereto that is supported  
17 within the pending Application as originally filed.

18 In view of the foregoing, the Applicants contend that pending claims 5, 6  
19 and 7 comply with the requirements of 37 CFR 1.75(c), and that the Examiner's  
20 Objections there against are invalid. The Applicants therefore respectfully request  
21 that the Examiner withdraw the respective Objections to pending claims 5, 6 and 7.  
22

### 23 Rejection of Claims under 35 U.S.C. § 102

24 Claims 1-37 have been rejected under 35 U.S.C. § 102(e) as being  
25 anticipated by U.S. Patent Application Publication No. 2003/0225988 ("Ralphs").

The Applicants respectfully disagree that claims 1-37 (as respectively  
amended) are anticipated by Ralphs.

1 As a starting point, the PTO and the Federal Circuit provide that §102  
2 anticipation requires each and every element of the claimed invention to be  
3 disclosed in a single prior art reference. (*In re Spada*, 911 F.2d 705, 15 USPQ2d  
4 1655 (Fed. Cir. 1990).) The corollary of this rule is that the absence from a cited  
5 §102 reference of any claimed element negates the anticipation. (*Kloster*  
6 *Speedsteel AB, et al v. Crucible, Inc., et al*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir.  
7 1986).) Furthermore, “[a]nticipation requires that all of the elements and limitations  
8 of the claims are found within a single prior art reference.” (*Scripps Clinic and*  
9 *Research Found. v Genetech. Inc.*, 927 F.2d 1565, 1576, 18 U.S.P.Q.2d 1001, 1010  
10 (Fed. Cir. 1991 (emphasis added).) Moreover, the PTO and the Federal Circuit  
11 provide that §102 anticipation requires that there must be no difference between the  
12 claimed invention and the reference disclosure. (*Scripps Clinic and Research Found.*  
13 *v. Genetech, Inc.*, id. (emphasis added).)

14 Accordingly, if the Applicants can demonstrate that any one element or  
15 limitation in claims 1-37 (as respectively amended) is not disclosed by Ralphs, then  
16 the respective claim(s) must be allowed.

17 In the following arguments, the Applicants will focus in particular on  
18 independent claims 1, 11, 21, 29 and 37, as the Applicants believe those claims to  
19 be allowable (as respectively amended above) over Ralphs. It is axiomatic that any  
20 dependent claim which depends from an allowable base claim is also allowable, and  
21 therefore the Applicants do not believe it is necessary to present arguments in favor  
22 of each and every dependent claim.

#### 23 24 Claim 1

25 The Applicants contend that claim 1, as amended (and rejected claims 2-10  
which depend therefrom), are not anticipated by Ralphs. With respect to claim 1 (as  
amended), that claim includes the following recitations:

1 A method of retrieving data, comprising:  
2 waiting for a predefined interval of time;  
3 retrieving a first quantity of data from a remote entity after the  
4 predefined interval of time; and  
5 redefining the interval of time in accordance with a predefined  
6 function, wherein the redefining is performed responsive to the  
7 retrieving a first quantity of data from a remote entity.

8 (Emphasis added.)  
9

10 Ralphs fails to provide redefining the interval of time in accordance with a  
11 predefined function, as recited in combination with the other features and  
12 limitations of claim 1, as amended. Also, Ralphs fails to provide that such  
13 redefining is performed responsive to the retrieving a first quantity of data from a  
14 remote entity, as recited in combination with the other features and limitations of  
15 claim 1, as amended.

16 Rather, Ralphs is directed to a computer system (100) including a storage  
17 device (150, 180), wherein a host computer (101) is configured to: 1) issue a  
18 command (10) to the storage device; 2) lookup (14) and initiate (16) a corresponding  
19 "timeout period" (i.e., essentially, a wait cycle) during execution of the command by  
20 the storage device; and 3) provide/return an error indication (20) in the event that the  
21 storage device has failed to execute the command as of the end of the timeout  
22 period (Abstract; ¶ 0008; and Figs. 1, 4, 6 and 7 of Ralphs). Thus, Ralphs is directed  
23 to a "watchdog" timer system that provides a user with an error notification in the  
24 event that particular storage device command is not completed in an anticipated  
25 period of time.

Ralphs states that the particular timeout period used during any specific  
operation is read from a storage file (¶¶ 0008, 0026, etc.). Ralphs also states that

1 multipliers (i.e., coefficients) can be defined and stored within such a storage file for  
2 use with the corresponding timeout periods (§§ 0007, 0038 and 0039, etc.). Ralphs  
3 further states that a user may change, or edit, any one or more of the timeout  
4 periods and/or multipliers by way of its respective value within the corresponding  
5 storage file (§ 0049, etc.).

6 However, Ralphs does not provide, teach or suggest that any timeout period  
7 (or multiplier) is ever redefined in accordance with a predefined function, as  
8 recited by claim 1 (as amended). Ralphs is completely devoid of the terms  
9 “function”, “redefine”, “redefining”, or any of their respective equivalents, in any  
10 context. In order to understand the foregoing distinction, the Examiner is respectfully  
11 referred to the description at page 6, line 20 to page 7, line 34 of the pending  
12 Specification, and Figs. 2 and 3 of the Drawings, as respectively originally filed.  
13 Therein, an interval-of-time is redefined in accordance with an exemplary operation  
14 (i.e., calculation) of the present teachings, which helps to clarify the context of the  
15 term “function” as it applicable to the language of claim 1, as amended. The  
16 Applicants contend that Ralphs makes no provision of a “function” consistent with the  
17 usage of that term in the present teachings and as recited by claim 1, as amended.

18 Furthermore, Ralphs fails to provide for redefining an interval of time  
19 responsive to the retrieving a first quantity of data from a remote entity, as  
20 recited in combination with the other features and limitations of claim 1, as amended.  
21 Under Ralphs, all timeout periods and/or multipliers within a system can be defined  
22 once and applied forever as essentially static (i.e., constant) values. Ralphs  
23 completely fails to provide, teach or suggest that *anything* is redefined responsive  
24 to any particular (i.e., successfully completed) operation. In any case, the Applicants  
25 assert that Ralphs fails to provide at least: 1) redefining the interval of time in  
accordance with a predefined function; and wherein 2) the redefining is performed  
responsive to the retrieving a first quantity of data from a remote entity. Thus,

1 Ralphs fails to provide at least the foregoing limitations as positively recited by  
2 claim 1, as amended.

3 For at least these reasons, the Applicants assert that the § 102 rejection of  
4 claim 1, as amended, is unsupportable and should be withdrawn. Therefore, the  
5 Applicants assert that claim 1, as amended, is allowable. As claims 2-10 depend  
6 (directly or indirectly) from claim 1, as amended, it is axiomatic that they too are  
7 allowable at least by virtue of their dependence from an allowable base claim, as  
8 well for their own respectively patentable features and limitations.

9  
10 Claim 11

11 The Applicants contend that claim 11, as amended (and rejected claims 12-20  
12 which depend therefrom), are not anticipated by Ralphs. With respect to claim 11  
13 (as amended), that claim includes the following recitations:

14  
15 A data handling system, comprising:

16 a remote entity configured to store data;

17 a local entity coupled in data communication with the remote  
18 entity, the local entity configured to:

19 wait for a predefined interval of time;

20 retrieve a first quantity of data from the remote entity after  
21 the predefined interval of time; and

22 redefine the interval of time in accordance with a  
23 predefined function responsive to the retrieval of a first quantity  
24 of data from the remote entity.

25 (Emphasis added.)

1       Ralphs fails to provide an entity configured to redefine the interval of time in  
2 accordance with a predefined function responsive to the retrieval of a first quantity of  
3 data from the remote entity, as recited in combination with the other features and  
4 limitations of claim 11, as amended. More to the point, Ralphs fails to provide both:  
5 1) a predefined function; and 2) performing a redefinition of an interval of time (or  
6 anything else) responsive to the retrieval of a first quantity of data from the remote  
7 entity.

8       As discussed above, Ralphs is directed to the use of timeout periods and their  
9 corresponding multipliers (if any) that are stored within a file and used on a lookup  
10 basis, so as to "wait out" the (presumed) execution of a command by a data storage  
11 device. Thus, Ralphs is directed to timeout periods used in performing a Go/No-Go  
12 type of error messaging. Ralphs is not concerned with *redefining intervals of time in*  
13 *response to a data retrieval operation* (as recited by claim 11, as amended).

14       In any event, Ralphs fails to provide any entity configured to: 1) redefine an  
15 interval of time in accordance with a predefined function; 2) responsive to the  
16 retrieval of a first quantity of data from the remote entity, as recited in combination  
17 with the other features and limitations of claim 11, as amended. For at least these  
18 reasons, the Applicant assert that the § 102 rejection of claim 11, as amended, is  
19 unsupportable and should be withdrawn.

20       In view of the foregoing, the Applicants assert that claim 11, as amended, is  
21 allowable. As claims 12-20 depend (directly or indirectly) from claim 11, as  
22 amended, it is axiomatic that they too are allowable at least by virtue of their  
23 dependence from an allowable base claim, as well for their own respectively  
24 patentable features and limitations.

25  
(Continued on next page.)

1 Claim 21

2 The Applicants contend that claim 21, as amended (and rejected claims 22-28  
3 which depend therefrom), are not anticipated by Ralphs. With respect to claim 21  
4 (as amended), that claim includes the following recitations:

5  
6 A computer-accessible storage media including an executable  
7 program code, the program code configured to cause a processor to:  
8 wait for a predefined interval of time;  
9 retrieve a first quantity of data after the predefined interval of  
10 time; and  
11 redefine the interval of time in accordance with a predefined  
12 function responsive to the retrieval of a first quantity of data.

13 (Emphasis added.)  
14

15 As discussed above, Ralphs fails to provide a computer program code  
16 configured to cause a processor to redefine the interval of time in accordance with a  
17 predefined function responsive to the retrieval of a first quantity of data, as recited  
18 in combination with the other features and limitations of claim 21, as amended.  
19 Thus, Ralphs fails to provide at least the foregoing limitations as recited by claim 21,  
20 as amended.

21 In view of the deficiencies of Ralphs, the Applicants assert that the § 102  
22 rejection of claim 21 (as amended) is invalid and should be withdrawn. Therefore,  
23 the Applicants contend that claim 21, as amended, is allowable. As claims 22-28  
24 depend (directly or indirectly) from claim 21, as amended, it is axiomatic that they  
25 too are allowable at least by virtue of their dependence from an allowable base  
claim, as well for their own respectively patentable features and limitations.



1 Claim 29

2 The Applicants contend that claim 29, (and rejected claims 30-36 which  
3 depend therefrom), are not anticipated by Ralphs. With respect to claim 29, that  
4 claim includes the following recitations:

5  
6 A data system, comprising:

7 a remote entity configured to store data;

8 a user computer coupled in data communication with the remote  
9 entity and configured to generate and store data within the remote  
10 entity; and

11 a local entity coupled in data communication with the remote  
12 entity, the local entity configured to:

13 wait for a predefined interval of time;

14 retrieve a first quantity of data defining a retrieval quantity  
15 from the remote entity after the predefined interval of time;

16 divide the predefined interval of time by the retrieval  
17 quantity to define a data creation period;

18 multiply the data creation period by a predefined quantity  
19 to redefine the interval of time;

20 wait for the redefined interval of time; and

21 retrieve a second quantity of data from the remote entity  
22 after the redefined interval of time.

23 (Emphasis added.)

24  
25 Ralphs fails to provide a local entity (or anything else) configured to divide  
the predefined interval of time by the retrieval quantity to define a data creation  
period, as recited in combination with the other features and limitations of claim 29.

1 Also, Ralphs fails to provide a local entity that is configured to multiply the data  
2 creation period by a predefined quantity to redefine the interval of time, as recited in  
3 combination with the other features and limitations of claim 29.

4 Ralphs provides for timeout periods that can be used alone or in conjunction  
5 with corresponding multipliers (coefficients) that are read from a storage file  
6 (basically, a lookup table), for purposes of providing watchdog timer capabilities.  
7 Furthermore, Ralphs describes that such timeout periods and multipliers are  
8 essentially established values that are used continuously, as-is, unless a user opts  
9 to edit one or more of them within their storage file (§ 0049 of Ralphs). However,  
10 Ralphs fails to provide (or suggest) that *any* value should be divided by any other  
11 value. In fact, Ralphs is completely devoid of the terms "divide", "quotient", or any of  
12 their respective equivalents, in any context. The Examiner has asserted that Ralphs  
13 teaches dividing a predefined interval of time, as Ralphs teaches that a multiplier  
14 (i.e., as used with a timeout period) can be a fractional value (page 7 of Office  
15 action). Respectfully, the teachings of Ralphs vary substantially from the subject  
16 matter recited by claim 29 in at least the following ways:

17 a) As recited by claim 29, the *predefined interval* of time is divided by the  
18 *retrieval quantity* to define a *data creation period*. Thus, the *data creation period* is a  
19 quotient, not a product. (The commutative property of multiplication is not applicable  
20 to the process of division:  $X/Y$  does not necessarily equal to  $Y/X$ , whereas  $XY$   
21 always equals  $YX$ ). Thus, the use a fractional multiplier as taught by Ralphs is not  
22 the same mathematical process as the division operation recited by claim 29.

23 b) The *data creation period* derived in claim 29 is an intermediate value that  
24 must be calculated prior to multiplying that value by a *predefined quantity*, wherein  
25 the resulting product is the redefined (i.e., newly calculated) *interval of time*. Ralphs  
does not teach or suggest the mathematical calculation of intermediate value in  
order to "redefine" any timeout period and/or multiplier. Thus, each "timeout period"

1 and "multiplier" taught by Ralphs is essentially an independent variable and is *not*  
2 expressly dependent upon any particular prior calculation.

3 In any case, Ralphs does not provide any teaching to: 1) divide the  
4 predefined interval of time by the retrieval quantity to define a data creation period;  
5 and then to 2) multiply the data creation period by a predefined quantity to redefine  
6 the interval of time. Thus, Ralphs fails to provide at least these foregoing limitations  
7 as positively recited by claim 29.

8 In view of the foregoing and other deficiencies of Ralphs, the Applicants  
9 assert that the § 102 rejection of claim 29 is invalid and should be withdrawn.  
10 Therefore, the Applicants contend that claim 29 is allowable. As claims 30-36  
11 depend (directly or indirectly) from claim 29, it is axiomatic that they too are  
12 allowable at least by virtue of their dependence from an allowable base claim, as  
13 well for their own respectively patentable features and limitations.

14  
15 Claim 37

16 The Applicants contend that claim 37, as amended, is not anticipated by  
17 Ralphs. With respect to claim 37 (as amended), that claim includes the following  
18 recitations:

19  
20 A data handling system, comprising:

21 remote means for generating a present quantity of data; and

22 local means for:

23 waiting for an interval of time corresponding to retrieving

24 a prior quantity of data from the remote means;

25 retrieving the present quantity of data from the remote  
means after the interval of time; and

redefining the interval of time in accordance with a predefined function responsive to the retrieving the present quantity of data from the remote means.

(Emphasis added.)

As discussed above, Ralphs fails to provide a system including means for redefining the interval of time in accordance with a predefined function, responsive to the retrieving the present quantity of data from the remote means, as recited in combination with the other features and limitations of claim 37, as amended. Thus, Ralphs fails to provide at least the foregoing limitations as recited by claim 37, as amended.

In view of the deficiencies of Ralphs, the Applicants assert that the § 102 rejection of claim 37 (as amended) is invalid and should be withdrawn. Therefore, the Applicants contend that claim 37, as amended, is allowable.

## Summary

The Applicants believe that this response constitutes a full and complete response to the Office action. Therefore, the Applicants request reconsideration of claims 1-37, as respectively amended, in favor of timely allowance.

(Continued on next page.)

1 The Examiner is respectfully requested to contact the below-signed  
2 representative if the Examiner believes this will facilitate prosecution toward  
3 allowance of the claims.

4  
5 Respectfully submitted,

6 Timothy P. BLAIR and Roger T. BAIRD

7  
8 Date: January 11, 2006

9 By John S. Reid  
10 John S. Reid  
11 Attorney and Agent for Applicants  
12 Reg. No. 36,369  
13 Phone: (509) 534-5789  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25